



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

TO: Philip E. Stutzman, Director of Compliance

FROM: Vicki Rippie, Executive Director

DATE: December 3, 2008

SUBJECT: Complaint - Washington Association of Realtors, Realtors Political Action Committee, Realtors Quality of Life PAC, Rob McKenna 2008 Campaign, and Dino Rossi 2008 Campaign

RCW 42.17.020(20) states that "electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

- (a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;
 - (b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and
 - (c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.
- RCW 42.17.020(21) exempts certain activities from the definition of electioneering communication.

RCW 42.17.565 requires that a payment for or promise to pay for any electioneering communication shall be reported to the commission by the sponsor. The sponsor of an electioneering communication is required to report to the commission within twenty-four hours of, or on the first working day after, the date the electioneering communication is broadcast, transmitted, mailed, erected, distributed, or otherwise published. Electioneering communications shall be reported electronically by the sponsor using software provided or approved by the commission. Failure of any sponsor to report electronically under this section shall be a violation of this chapter.

RCW 42.17.020(28) "Independent expenditure" means an expenditure that has each of the following elements:



(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more. (* \$500 was raised to \$800 for 2008.)

WAC 390-16-210 states in part:

(1) ...

(2) **Duplicating political advertising.** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

(3) **Consulting with a state, local or judicial candidate.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or

(d) The expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17.020 and WAC 390-05-243.

(4) ...

(5) ...

(6) ...

RCW 42.17.640 limits contributions to candidates for statewide office. For individuals, political committees, unions, corporations, and entities other than bona fide political parties, the limit is \$1,600 per election. It is a violation of RCW 42.17.640 to make or accept contributions that exceed the contribution limitations provided in this section.

RCW 42.17.660 concerns attribution of contributions by controlled entities and states in part:

(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation that is participating in an election campaign or making contributions, or a local unit or branch of a trade association, labor union, or collective bargaining association that is participating in an election campaign or making contributions. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the trade association, labor union, collective bargaining organization, or local unit of a trade association, labor union, or collective bargaining organization.

(3) The commission shall adopt rules to carry out this section and is not subject to the time restrictions of RCW 42.17.370(1).

Summary:

In 2008, PDC staff learned that:

Regarding Electioneering Communications

- On October 18, October 21, and October 25, 2008, Washington Association of Realtors (WAR) sponsored and presented to the public, mailings totaling \$414,228.94. On October 30, 2008, WAR filed PDC form C-6, which included the following statement: "This mailing is an "issue advocacy piece re: the excise tax and does not support or oppose any candidate. As such, this C-6 is being filed under protest and only because of the specific direction of the Director of Compliance of the PDC earlier today. In submitting this filing, the Washington Association of Realtors is not waiving any of its objections to this direction and explicitly reserves all rights to appeal and challenge the direction to file a C-6 at a later time under state and federal law." **(Exhibit 1)**
- PDC staff contends that the mailings were "electioneering communications" opposing gubernatorial candidate Christine Gregoire, and were required to be filed electronically within twenty-four hours of, or on the first working day after, the date the electioneering communications were broadcast, transmitted, mailed, erected, distributed, or otherwise published.
- Form C-6 did not identify the candidate identified in the advertisements, the candidate's office, the candidate's party, and whether the advertising supported or opposed the candidate.

Regarding Solicitations for Contributions to Realtors Political Action Committee and Subsequent Expenditures by Realtors Quality of Life Pac

- During 2007 or 2008, Realtors Political Action Committee (R-PAC) developed video and brochure solicitations for contributions to R-PAC, featuring Rob McKenna, Washington State Attorney General and a candidate for re-election in 2008. R-PAC funded Realtors Quality of Life PAC (RQL-PAC) during 2008. RQL-PAC sponsored advertisements totaling \$28,888.06 supporting Mr. McKenna's 2008 re-election campaign. Evidence indicates that Mr. McKenna provided fund-raising assistance to R-PAC before the advertising expenditures were made by RQL-PAC in support of Mr. McKenna's 2008 campaign. Thus, it appears that expenditures reported as independent expenditures by RQL-PAC may be over-limit in-kind contributions to Mr. McKenna's campaign. **(Exhibit 2)**

- During 2007 or 2008, R-PAC developed video and brochure solicitations for contributions to R-PAC, featuring Dino Rossi, a candidate for Governor in the 2008 election. R-PAC funded RQL-PAC during 2008. RQL-PAC sponsored advertisements totaling \$497,806.17 supporting Mr. Rossi's 2008 re-election campaign. Evidence indicates that Mr. Rossi provided fund-raising assistance to R-PAC before the advertising expenditures were made by RQL-PAC in support of Mr. Rossi's 2008 campaign. Thus, it appears that expenditures reported as independent expenditures by RQL-PAC may be over-limit in-kind contributions to Mr. Rossi's campaign. **(Exhibit 2)**

Alleged Violations:

Washington Association of Realtors, Realtors Political Action Committee and Realtors Quality of Life PAC

- The facts referenced above provide reason to believe that during October 2008, Washington Association of Realtors (WAR) may have violated RCW 42.17.565 by not filing timely and complete reports of electioneering communications (form C-6), totaling \$414,228.94, that opposed Christine Gregoire's 2008 campaign for Governor.
- The facts referenced above provide reason to believe that during 2008, Realtors Political Action Committee (R-PAC) and Realtors Quality of Life PAC (RQL-PAC) may have violated RCW 42.17.640 by making over-limit in-kind contributions to the Rob McKenna 2008 campaign for Attorney General since it appears that Mr. McKenna provided fund-raising assistance to R-PAC, R-PAC funded RQL-PAC, and RQL-PAC subsequently incurred advertising expenditures totaling \$28,888.06 that supported Mr. McKenna's campaign.
- The facts referenced above provide reason to believe that during 2008, Realtors Political Action Committee (R-PAC) and Realtors Quality of Life PAC (RQL-PAC) may have violated RCW 42.17.640 by making over-limit in-kind contributions to the Dino Rossi 2008 campaign for Governor since it appears that Mr. Rossi provided fund-raising assistance to R-PAC, R-PAC funded RQL-PAC, and RQL-PAC subsequently incurred advertising expenditures totaling \$497,806.17 that supported Mr. Rossi's campaign.

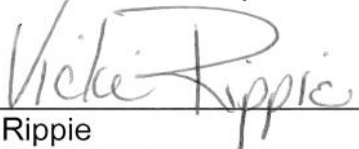
Rob McKenna 2008 Campaign

- The facts referenced above provide reason to believe that during 2008, the Rob McKenna 2008 Campaign for Attorney General may have violated RCW 42.17.640 by accepting over-limit in-kind contributions since it appears that Mr. McKenna provided fund-raising assistance to R-PAC, R-PAC funded RQL-PAC, and RQL-PAC subsequently incurred advertising expenditures totaling \$28,888.06 that supported Mr. McKenna's campaign.

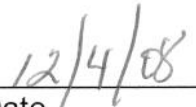
Dino Rossi 2008 Campaign

- The facts referenced above provide reason to believe that during 2008, the Dino Rossi 2008 Campaign for Governor may have violated RCW 42.17.640 by accepting over-limit in-kind contributions since it appears that Mr. Rossi provided fund-raising assistance to R-PAC, R-PAC funded RQL-PAC, and RQL-PAC subsequently incurred advertising expenditures totaling \$497,806.17 that supported Mr. Rossi's campaign.

Based on this information, I am filing this complaint and directing staff to investigate the allegations that Washington Association of Realtors, Realtors Political Action Committee, Realtors Quality of Life PAC, Rob McKenna 2008 Campaign for Attorney General, and Dino Rossi 2008 Campaign for Governor may have violated chapter 42.17 RCW as noted above.



Vicki Rippie
Executive Director



Date

Exhibits

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| Exhibit 1 | PDC Form C-6 filed by Washington Association of Realtors on October 30, 2008 |
| Exhibit 2 | PDC form C-6 reports filed by Realtors Quality of Life PAC supporting Dino Rossi and Rob McKenna |